



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 8 2009

November Inc.
P.O. Box 371553
Las Vegas, Nevada 89137

RE: MUR 6101
November Inc.

Dear November Inc.:

On October 28, 2008, the Federal Election Commission notified November Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded at that time.

Upon further review of the allegations contained in the complaint, the Commission, on April 21, 2009, found that there is reason to believe November Inc. violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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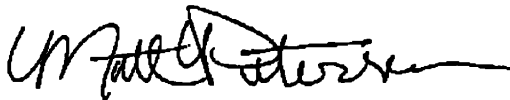
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Joshua Smith, the attorney assigned to this matter, at (202) 694-1624.

Sincerely,



Matthew S. Petersen
Vice Chairman

Enclosures
Factual and Legal Analysis
Designation of Counsel Form

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: November Inc.

MUR: 6101

I. INTRODUCTION

This matter arises out of a complaint alleging that November Inc. made prohibited corporate contributions to Heller for Congress and Elisabeth Ballinger, in her official capacity as treasurer ("the Committee"), by extending credit to the Committee that remained outstanding for a long period of time. Based on available information indicating that the Committee owed in excess of \$100,000 to November Inc. for over two years, the Commission finds reason to believe that November Inc. made prohibited corporate contributions in violation of 2 U.S.C. § 441b(a).

II. FACTUAL BACKGROUND

The complaint in this matter raises questions about the Committee's debts owed to vendor November Inc.¹ The complainant asserts that November Inc. provided goods or services to the Committee, and that the Committee failed to repay this entity. Complainant argues that November Inc. extended credit to the Committee outside the normal course of business because the Committee has "regularly and promptly paid for [other] services rendered" during both the 2006 and 2008 campaign cycles, and because it is not the "usual or normal practice" for political consulting companies to allow debts to go unpaid for two years. Complaint at 2. The Complainant states that the credit extended to the Committee is not substantially similar to the credit extended to nonpolitical clients, because regional consulting firms do not "lend sums in excess of \$250,000 interest free for periods of over a year to non-political clients." *Id.* November Inc. did not submit a response to the complaint.

¹ The Committee is the principal campaign committee for Dean Heller, who was elected to the U.S. House of Representatives for Nevada's Second Congressional District in 2006 and was reelected in 2008.

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III. LEGAL ANALYSIS

The issue presented in this case is whether November Inc. made a prohibited contribution in the form of an extension of credit to the Committee that has remained outstanding for more than two years. The Federal Election Act of 1971, as amended ("the Act"), prohibits contributions to a candidate or an authorized committee in excess of \$2,300 in connection with Federal elections, and it prohibits corporations (including commercial vendors) from making contributions or expenditures in connection with any election for Federal office. *See* 2 U.S.C. §§ 441a(a)(1) and 441b(a); 11 C.F.R. § 114.2. Similarly, the Act prohibits committees from knowingly accepting excessive or prohibited contributions. *See* 2 U.S.C. §§ 441a(a)(1) and 441(b). A "contribution" is defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election." 2 U.S.C. § 431(8)(A)(i). A "commercial vendor" is any person who provides goods or services to a candidate or political committee, and whose usual and normal business involves the sale, rental, lease, or provision of those goods or services. *See* 11 C.F.R. § 116.1(c).

The extension of credit to a candidate's authorized political committee by a commercial vendor is considered a contribution unless the credit is extended in the ordinary course of the person's business, and the terms are substantially similar to extensions of credit to nonpolitical debtors of similar risk and size of obligation. *See* 11 C.F.R. § 100.55; 11 C.F.R. § 116.3(b). An extension of credit includes, but is not limited to: (1) any agreement between the creditor and political committee that full payment is not due until after the creditor provides goods or services to the political committee; (2) any agreement between the creditor and political committee that the political committee will have additional time to pay the creditor beyond the previously agreed-to due date; and (3) the failure of the political committee to make full payment to the

1 creditor by a previously agreed-to due date. See 11 C.F.R. § 116.1(e). In assessing whether a
2 commercial vendor extended credit in the ordinary course of business, and thus did not make a
3 contribution, the Commission will consider: (1) whether the commercial vendor followed its
4 established procedures and its past practice in approving the extension of credit; (2) whether the
5 commercial vendor received prompt payment in full if it previously extended credit to the same
6 candidate or political committee; and (3) whether the extension of credit conformed to the usual
7 and normal practice in the commercial vendor's trade. See 11 C.F.R. § 116.3(c). A contribution
8 also will result if a creditor fails to make a commercially reasonable attempt to collect the debt.
9 See 11 C.F.R. § 100.55.

10 As a registered corporation in the State of Nevada specializing in "fundraising,
11 government affairs, media, campaign, and project management," November Inc. appears to be a
12 commercial vendor under the Commission's regulations. See 11 C.F.R. § 116.1(c); *see also*
13 November Inc. Home, at <http://www.novemberinc.com> (last visited Mar. 30, 2009) (stating that
14 November Inc.'s mission is "Building winning campaigns and successful relationships with
15 business and political leaders across the country"). A Dun and Bradstreet research service report
16 for the company states that November Inc. is a "political campaign organization" with annual
17 sales of \$100,000. The Committee lists its debt to November Inc. as "consulting and fundraising
18 services." See Schedule D, 2008 Post-General Report.

19 It appears that November Inc. extended credit to the Committee because it did not require
20 full payment until after it rendered services to the Committee. See 11 C.F.R. § 116.1(e)(1). For
21 at least two years, a significant portion of the Committee's debt to November Inc. has remained
22 outstanding. From mid-2006 until the present, the Committee has owed November Inc. at least
23 \$71,706.50. This amount increased to \$92,390 before the 2006 general election, and again to

1 \$117,862.65 in the Committee's 2006 Post-General Report filing. The amount then fell by
2 \$1,106.50 in the beginning of 2007 to \$116,757.60. However, this amount remained constant
3 from early 2007 until soon after the instant complaint was filed, when the Committee made two
4 disbursements of \$4,200 each on October 31, 2008 and November 4, 2008, bringing the total
5 owed to November Inc. to \$108,356.60 as of December 31, 2008. Despite the amount of money
6 that remained outstanding for the company's consulting services, the Committee has made
7 disbursements to November Inc. for minor expenses. *See, e.g.,* 2008 October Quarterly Report
8 (Committee disbursed \$3,122.97 to November Inc. for "copier rentals").

9 Based on the available information, November Inc. did not extend credit to the
10 Committee in the ordinary course of business and on substantially similar terms as those of
11 nonpolitical clients of similar risk and size of obligation. *See* 11 C.F.R. § 100.55; 11 C.F.R.
12 § 116.3(b). November Inc. did not respond to the complaint or provide information
13 demonstrating that it followed its established procedures and past practice, that it previously
14 extended credit to the Committee and received prompt payment in full, or that the extension of
15 credit conformed to the usual and normal practice in its trade or industry. *See* 11 C.F.R.
16 § 116.3(c). As a result, we have no information regarding November Inc.'s collection policies
17 and practices, advance payment policies, or billing cycles for nonpolitical debtors, and we lack
18 information regarding the terms of the transaction in this case. *See id.* However, we question
19 whether a corporation with an estimated \$100,000 in annual sales could extend credit in excess
20 of \$100,000 for more than two years in the ordinary course of business.

21 Similarly, November Inc. provided no information demonstrating that it has acted in a
22 commercially reasonable manner in attempting to collect the debt owed by the Committee. As of
23 the date of this report, November Inc. has still not been paid in full. Although the Committee has

**MUR 6101
Factual and Legal Analysis
November Inc.**

- 1 paid \$8,400 toward the total debt owed to the vendor, \$108,356.60 remains outstanding.
- 2 Moreover, the debt owed by the Committee has been continuously outstanding for at least two
- 3 years. Thus, the Commission finds reason to believe that November Inc. made a prohibited
- 4 corporate contribution, in violation of 2 U.S.C. § 441b(a).